

PVC Heights Company Vs The Principal Commissioner of Customs, ICD

Court: Customs, Excise And Service Tax Appellate, New Delhi

Date of Decision: Jan. 17, 2025

Acts Referred: Customs Act, 1962 " Section 14(1), 14(1A), 108, 111(l), 111(m), 114A, 114AA

Indian Evidence Act, 1872 " Section 24

Customs Valuation Rules 2007 " Rule 1(3), 3, 4, 4(2), 12

Hon'ble Judges: Dr. Rachna Gupta, Member (J)

Bench: Single Bench

Advocate: Prem Ranjan Kumar, Manish Kumar Chawda

Final Decision: Allowed

Judgement

Dr. Rachna Gupta, J

2. Present appeal has been filed to assail the order-in-appeal No. 20/2023-24 dated 13.04.2023 vide which the Commissioner (Appeals) has rejected

the appeal filed against the Order-in-Original No. 23/2020-21 dated 14.09.2020.

2. The facts, in brief, relevant for the present adjudication are that PVC Heights Company, the appellant herein is a partnership concern being

engaged in import of "PVC Panels and Accessories" from China. The Directorate of Revenue Intelligence, Ludhiana got an intelligence about

under valuation of such imports. Accordingly, the premises of appellant's were also got searched under Panchnama proceedings dated 11.07.2019

during which several documents along with electronic devises were detained. The goods which were found in stock were the part of goods imported

under Bill of Entry No.2670239 dated 02.04.2019, 2814591 dated 12.04.2019, 3030420 dated 29.04.2019 and 3887634 dated 01.07.2019 which were

seized.

3. The statement of the proprietor of the appellant was recorded who admitted that to remain competitive, they were under valuing the goods. During

the impugned period, the goods under the live Bill of Entry No. 4099408 dated 17.07.2019 were examined under Panchnama dated 25.07.2019 on

appellant's own request vide letter dated 26.07.2019. The Bill of Entry was reassessed and the appellant accepted the value loading at USD 1.21

per sq meter of PVC panels and USD 0.10 per meter for PVC clips. The appellant also deposited two demand drafts of an amount of Rs. 15 lakhs

and Rs. 5/- lakhs which got deposited on 25.07.2019 and 08.08.2019 being the differential duty for past imports. It is, thereafter that the impugned

show cause notice No. 856/2019/25 dated 10.01.2020 was served upon the appellant proposing the rejection of declared value of Rs. 80,90,849/- to be

re-determined as Rs. 1,11,90,836/- in terms of sub-rule (1) of under Rule 12 of Customs Valuation Rules 2007 and to be re-determined under Rule

1(3) of Customs Valuation Rules, 2007. An amount of Rs. 9,60,376/- was proposed to be recovered along with the interest in respect of goods

imported under aforementioned four Bills of Entries. The seized goods were proposed to be confiscated in terms of Section 111 (l) of the Customs

Act, 1962. Penal action was proposed in terms of Section 114A and 114AA of the Customs Act, 1962 and the amount of Rs. 20 lakhs voluntarily

deposited by the appellant was proposed to be appropriated against the demand, interest and penalty to be confirmed against the appellant. The said

proposal was confirmed initially vide Order-in-Original No. 23/2020-21 dated 14.09.2020. The order was passed ex-parte. Appeal against the said

orders has been rejected vide order under challenge. Being aggrieved the appellant before this Tribunal.

4. I have heard. Shri Prem Ranjan Kumar, learned Advocate for the appellant and Shri Manish Kumar Chawda, learned Authorized Representative

for Revenue.

5. Learned counsel for the appellant submitted that the original adjudicating authority has not provided the sufficient opportunity of hearing to the

appellant and proceeded the appellant ex-parte while deciding the matter before him. The Commissioner (Appeals) has erred in holding that there is no

violation of principles of natural justice. Learned counsel has submitted that the demand has been confirmed merely on the basis of statement of the

appellant without having any evidence to corroborate the said statement and to even support the re-determined value. The learned appellate authority

failed to appreciate that during the relevant period, the entire country was facing Covid 19 and there were general instructions from the Government to

avoid travel wherever possible and therefore, there was no reason for the adjudicating authority to rush and decide the show cause notice, ex-parte

without putting the appellant to notice. Hence the said order has been passed in violation of the principles of natural justice. Commissioner (Appeals)

has also erred similarly. The appellant relied upon the judgment of Hon'ble High Court of Gujarat at Ahmedabad in the case of Reankhan Belin

Vs. State of Gujarat C/SCA/73076/2020 dated 08.06.2020.

6. It is further submitted that four of the Bills of Entries were finally assessed by the proper officer at the time of examination and thereafter out of

charge order was passed. The present show cause notice has disturbed the assessment of the goods which were already cleared by the department

themselves that too, without any evidence. The confirmation of the differential duty is therefore, alleged to be apparently wrong. Learned counsel has

relied upon the decision of the Hon'ble Apex Court in the case of ITC Ltd. reported in 2019 (17) SCC 46 (SC).

7. It has also been brought to notice that the department while re-determining the value has referred to certain price list but admittedly the same was

never brought on record. The duty demand has been confirmed solely relying on the statement of the appellant alleging it to be the admission of under

valuation on part of the appellant. It is submitted that the said statement was recorded under coercion, therefore, the decision of Hon'ble Apex

Court in the case of CCE Madras Vs. Systems & Components Pvt. Ltd reported in 2004 (165) ELT 136 (SC) is wrongly relied upon by the

adjudicating authority. In the said case the dispute was with respect to classification and not the valuation. Learned counsel impressed upon that the

amount of Rs. 20 lakhs was also in-voluntary payment. The appellant was rather forced to deposit the said amount. Above all mere statement is not

enough to enhance the value that too, in the absence of contemporaneous import of similar goods. Learned counsel has relied upon the decision of

Supreme Court in the case of Commissioner (Imports) Mumbai Vs. Ganpati Overseas as reported in 2023 (386) ELT 802 (SC) is relied upon. The

value, therefore, cannot be rejected without a cogent reasons and the evidence. The order under challenge is accordingly, prayed to be set aside and

the appeal is prayed to be allowed.

8. While rebutting the submissions, learned Departmental Representative has mentioned that Shri Anup Jain, partner of the importing firm had

admitted that they were undervaluing their imports to evade the Customs duty to remain competitive in the market. He while recording his statement

dated 18.07.2019 under Section 108 of the Customs Act, 1962, had disclosed the actual transaction value of goods imported. He acknowledged that

the appellant had willfully short paid the appropriate Customs duties by suppression of facts. Appellant failed to declare the actual prices before the

Indian Customs at the time of filing Bill of Entries despite the same was in their knowledge. Thus the imported goods were admittedly cleared on mis-

declared value, while suppressing the actual value with an intend to evade Customs duty; no corroboration was required. Thus the appellant's

imported goods are rightly held liable to confiscation under Section 111(m) of the Customs Act, 1962.

9. It is further submitted that the appellant had manipulated the import documents submitted to Customs, to evade Customs duty. Thus, they are rightly

held liable to pay the penalty under Section 114A and Section 114AA of the Customs Act, 1962. In view of the foregoing, learned Departmental

Representative reiterated the findings of the Commissioner (Appeals) and, prayed for the appeal to accordingly be dismissed.

10. Having heard the rival contentions, I observe and hold as follows:

11. Present is the case where the value declared by the assessee importer has been rejected I observe that Section 14(1) of the Customs Act read

with Rule 3 and 4 of Customs Valuation Rules prescribes a method for determination of value of goods. By legal fiction incorporated in this section,

the value of imported goods is the deemed price at which same or like goods are ordinarily sold or offered for sale for delivery at the time and place of

importation in course of international trade. Accordingly, the price paid by the importer to the vendor in the ordinary course of commerce shall be

deemed to be the value in absence of any circumstance indicated in Section 14 sub-section 1 of Customs Act and those in Rule 4(2) of the Valuation

Rules. I draw my support from the decision of the Hon'ble Apex Court in the case of Eicher Tractors Limited Vs. Commissioner reported as

2001 (1) SCC 315. In a subsequent decision in the case of Varsha Plastics Pvt. Ltd. Vs. Union of India reported in 2009 (235) ELT 193 (SC), the

Hon'ble Apex Court has explained the meaning of word "ordinarily" occurring in Section 14 (sub-section 1) of the Customs Act holding that it

is "non-exceptional" or "usual" instead of meaning "universally". It has been held that by use of word "ordinarily" the indication is

that ordinary value of the goods is what it would have been in course of international trade at the time of import.

12. In view of these observations of Hon'ble Apex Court, I hold that primarily the value declared by the importer exporter has to be considered as

the value for the purpose of assessment except there is some evidence/data to show that in the ordinary course of events in international trade the

value is different than what has been declared. I observe that in the present case there is no such evidence/data produced by the department.

13. Coming to the issue of rejection of such value:

13.1 As it has already been held that what has to be seen by the department is the value or the cost of imported goods at the time of importation that is

at the time when the goods reached the customs barrier, the value declared at that time i.e. invoice price as attached with bill of entry, has to be

considered as assessable value. The department has to give cogent reasons while proposing rejection of the said value. The invoice price otherwise

forms the basis of transaction value, the Hon'ble Apex Court in the case of Ganpati Overseas (supra) as relied upon by the appellant has held that

before rejecting the invoice price, the department has to give cogent reasons for such rejection. Thus before rejecting the transaction value the

department has to find out as to whether there are any import of identical goods or similar goods at a higher price at or around the same time as that

of imports in question. It has been clarified by the Hon'ble Apex Court that unless the evidence is gathered in that regard the question of importing

Section 14(1A) of the Customs Act does not arise. Thus casting suspicion on invoice produced by the importer is denied to be sufficient to reject it as

the evidence of value of imported goods. It has been categorically held that the under valuation has to be proved that too, in the form of evidence

about comparable imports. In the absence thereof, the benefit of doubt must go to the importer.

14. Reverting to the facts of the present case, I observe that admittedly there is no evidence of comparable imports at the relevant time with respect

to the value of PVC panels and accessories imported by the appellant. In the absence thereof, there is no basis even to arrive at the re-determined

value. The undervaluation of the impugned goods has been confirmed solely on the basis of the statement of the appellant. The said statement is

alleged to be recorded under coercion, not only the said statement, but the payment of Rs. 20 lakhs made by the appellant by two demand drafts is

also alleged to be involuntary. Indisputably a confession would come within the purview of Section 24 of Indian Evidence Act, 1872. According to

which confession is irrelevant except if making the confession appears to have been caused by any inducement, threat or promise. The Hon'ble

Apex Court in the case of Shanti Prasad Jain Vs. Director of Enforcement reported in 1963 (2) SCR 297, The constitution Bench thereof, has held

that initial burden to prove that the confession is voluntary rests upon the department.

15. State (NCT of Delhi) Vs. Navjot Sandhu Alias Afsan Guru reported in (2005) 11 SCC 600 held that Section 24 of Indian Evidence Act lays down

the rule that a confession made under inducement, threat or promise becomes irrelevant in a criminal proceedings. The Hon'ble Court clarified

that if it appears to the Court that the making of confession was under any inducement, threat or promise the confession is liable to be excluded from

the evidence. The Hon'ble Apex Court also clarified that all admissions cannot be called as confessions and the initial burden lies upon the

department. In another decision in the case of Mirach Exports Pvt. Ltd. Vs. Collector of Customs reported in 1998 (3) SCC 292, the Hon'ble

Apex court held that the burden of proving a charge of undervaluation lies upon the Revenue and the Revenue has to produce necessary evidence to

prove the said charge. It has been held that what is to be examined is whether the Revenue has succeeded in showing that the apparent is not the real

and that the price shown in the invoices does not reflect the true sale price. As already observed above, the department has not produced any

evidence to support the presumption of under valuation as was raised in the impugned show cause notice.

16. In these circumstances, the statement of the proprietor which has been alleged to be under coercion, the sole evidence is held to have been

wrongly relied upon by the department to reject the value of imported goods shown in the invoice attached to the Bill of Entry. More for the reason

that the appellant had requested for the copy even of the non relied documents time to file its defense. The original adjudicating authority while

denying the said opportunity to the appellant had passed a decision against him ex-parte. In para 12 of the order in original the original adjudicating

authority has recorded that the voluntary statement of the appellant's Director is in conformity with the intelligence with DRI. According to which

the actual FOB price of China port was much higher. However, as already observed above, we do not find any document on record which may be

called as the document of proving the intelligence of DRI officers or which may be the document proving the actual FOB price. In the light of entire

above discussion, I hold that the department has wrongly rejected the declared assessable value of the impugned import vide four Bill of Entries. The

re-determined value is, therefore, not acceptable. The confirmation of the differential duty of Rs. 9,60,376/- is, therefore liable to be set aside along

with the order of confiscation and the order imposing various penalties. With these observations, I hereby set aside the order under challenge and

consequently, the appeal in hand is hereby allowed.

(Pronounced in open Court on 17/01/2025)